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PETROLEUM ANALYZER  
COMPANY L.P.

Plaintiff,

v.

STANDARD HEATER TUBE, INC.  
and DAVID MORRIS, INDIVIDUALLY,  
Defendants

IN THE DISTRICT COURT

BEXAR COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW, Petroleum Analyzer Company L.P., a Texas Limited Partnership complaining of David L. Morris and Standard Heater Tube, Inc. and for cause of action, would show the Court as follows:

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

PARTIES

2. Petroleum Analyzer Company L.P. is a Texas Limited Partnership located at 3234 East Pasadena Freeway, Houston, Texas 77503 and is the successor-in-interest to Alcor Petroleum Instruments, Inc. (hereinafter referred to collectively as "PAC"). David L. Morris is an individual who may be served with process at 719 West French Place, San Antonio, Texas 78212 or at such other place as Defendant may be found. Standard Heater Tube, Inc. ("Standard") is a Texas corporation, which may be served with process by serving its president and registered agent, David L. Morris at 719 West French Place, San Antonio, Texas 78212 or at such other place as Defendant may be found.

PLAINTIFF'S ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY RESTRAINING ORDER

1/31/00

### JURISDICTION AND VENUE

3. This Court has jurisdiction as the amount in controversy is within the jurisdictional limits of this Court. Venue is proper in Bexar County, Texas pursuant to section 15.002 of the Texas Civil Practice and Remedies Code Annotated as it is the county of Defendant, Morris' residence, the county of Defendant, Standard's principal place of business and the county where all or a substantial part of the events or omissions giving rise to PAC's claims occurred.

### SUMMARY OF FACTS

4. PAC seeks an injunction preventing a former employee from continued violation of confidentiality agreement and theft of trade secrets. Morris, employed by PAC as an engineer for over a year gained significant confidential information regarding instruments manufactured by PAC, including the Jet Fuel Thermal Oxidation Tester ("JFTOT"), which uses a heater tube as an integral part of the test it performs. Morris, breaching the confidentiality agreement he made with PAC and with the trade secrets he acquired while employed by PAC, is manufacturing a clone heater tube and attempting to market it to PAC's customers. Until Morris began manufacturing his clone, PAC was the only manufacturer of heater tubes for use in the JFTOT. If an injunction is not issued, use of Morris' clone will cause the JFTOT warranties to be void and threatens the integrity and reliability of the tests performed by the JFTOT which, in turn, threatens the safety of the airline industry and cause irreparable injury to PAC's reputation.

### BACKGROUND FACTS

5. From April 28, 1988 until May 5, 1989, David Morris was an engineer employed by Alcor Petroleum Instruments, Inc. ("Alcor") to conduct various types of research, primarily focusing on the heater tube component of the JFTOT. The JFTOT is manufactured only by

T PAC, which holds the rights to manufacture the instrument and the heater tube by virtue of its patents for Apparatus for Determining the Thermal Stability of Fluids, Apparatus and Method for Determining the Thermal Stability of Fluids, and Method and Apparatus for Quantifying Thermal Oxidation Tester Tube Deposits. Virtually every company in the world that refines jet fuel for the aviation industry uses the JFTOT. The JFTOT performs a critical function, which impacts the worldwide safety of thousands upon thousands of commercial and private airline passengers. The JFTOT instrument tests whether a jet fuel contains the necessary chemical components in order to resist premature oxidation when passing through heat exchangers on the aircraft before entering the engines. Improper oxidation can create deposits inside the heat exchangers, which, in turn can cause the equipment to fail.

T 6. An integral and critical component of the JFTOT instrument and the test it performs is the heater tube. The heater tube design, including the physical and performance properties are trade secrets of PAC and are articulated within the patents held by PAC. PAC and its predecessors have invested enormous resources in developing its JFTOT and related heater tube technologies. These investments were made in a variety of ways, from research and development to undertaking efforts to have the technologies protected through the United States Patent and Trademark Office. The company also takes a variety of internal measures to preserve the confidentiality of these technologies. Access to engineering and development information regarding JFTOT and heater tubes is strictly limited within PAC, and employees who are provided access to these technologies are required to sign confidentiality agreements. In fact, Mr. Morris signed such an agreement (hereinafter referred to as "Agreement"). A true and correct copy of the Agreement signed by Mr. Morris is appended hereto as Exhibit A.

7. In that Agreement, Mr. Morris recognized he owed a fiduciary duty to his employer and that he would have access to trade secrets and other confidential and proprietary information. Confidential information to which Mr. Morris was given access includes, but is not limited to, customer names, customer data, business methods and techniques. Mr. Morris agreed that this confidential and proprietary information would never be disclosed outside the company. Mr. Morris also agreed he would not remove proprietary information from PAC upon his departure. Mr. Morris has admitted that he removed blueprint drawings of the heater tube, without authorization. Although Mr. Morris left PAC's employ some time ago, the technology he gained during his employment has not significantly changed. The information he needs in order to manufacture the clone of PAC's heater tube is not available in the public domain.

8. Recently, PAC discovered that Mr. Morris has violated the terms of the Agreement and took confidential and proprietary information from PAC. Mr. Morris is using PAC's confidential information to manufacture a heater tube for use in the JFTOT and is attempting to market that product to PAC's customers. Despite demand to cease and desist his activities, Mr. Morris flagrantly continues his use of PAC's confidential and proprietary information and the marketing of the heater tube to PAC's customers.

9. Morris is using his company, Standard to manufacture and market the heater tubes designed by using the confidential and proprietary information Morris obtained while employed by PAC.

10. The use of Standard's product in the JFTOT will nullify PAC's warranty of the JFTOT. The test results of the clone heater tubes are not reliable and pose a marked threat to aviation safety. In addition, the confusion in the marketplace concerning the source and quality

T of the heater tubes and the reliability of the test results will irreparably damage PAC's reputation and the resulting loss in revenue will be significant and incalculable

**APPLICATION FOR TEMPORARY RESTRAINING ORDER AGAINST MORRIS AND STANDARD**

11. PAC incorporates paragraphs 5 through 10 inclusive as if fully set forth verbatim herein.

12. Only PAC manufactures the JFTOT heater tube. Only PAC has the rights to this proprietary information. Morris was given access to this proprietary information and in fact, worked on heater tube research projects while employed by PAC. Morris has taken PAC's proprietary information, including plans and drawings of the heater tube, and has manufactured a heater tube clone and, despite PAC's demand to cease, is marketing it to PAC's customers.

T 13. Because the test results from using Standard's heater tubes are unreliable, fuel that is unacceptable could be marketed and sold to airlines and other who rely on test results to assess fuel safety. The disasters caused by improper fuel being used in the aircraft could result in the loss of hundreds of lives and millions of dollars of aviation equipment. Upon information and belief, Standard's tubes have not been tested by independent researchers to establish that they will not adversely impact the operation of the JFTOT or render false test results. An injunction should be issued at least until Standard sufficiently tests its products for reliability; although the breach's irreparable harm to PAC's reputation must still be addressed.

14. Additionally, the confusion in the marketplace from the marketing of Standard's tubes can cause irreparable harm to PAC's reputation and the resulting damages that are not quantifiable. Presently, PAC is the leader in the petroleum instrumentation industry and strives to maintain its reputation for producing quality products that render accurate and reliable results. The petroleum industry relies extensively on PAC's products and PAC's expertise. Inaccurate

T JFTOT test results can potentially mean millions of dollars of lost revenue to a petroleum refinery.

15. PAC has no adequate remedy at law. If Standard's heater tube causes substandard fuel to qualify for sale as jet fuel, the potential for loss of lives and equipment is immeasurable. If Standard's heater tube causes quality fuel to fail, then the potential adverse effect on PAC's reputation because the petroleum company lost significant revenue is immeasurable. Additionally, upon information and belief, neither Morris nor Standard have the assets to satisfy any judgment in favor of PAC. See *Texas Indus. Gas v. Phoenix Metallurgical Corp.*, 828 S.W.2d 529, 522 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1992, no writ) (for purposes of TRO, if damages cannot be calculated, or if the defendant is unable to pay damages, there is no adequate remedy at law). PAC is entitled to the relief it seeks, because by way of the attached verification, it has demonstrated a probable right of recovery, irreparable and imminent harm and no adequate remedy at law.

T 16. PAC prays that, pursuant to Rule 680 of the Texas Rules of Civil Procedure, this Court order the issuance of a Temporary Restraining Order requiring Morris and Standard to return all PAC's property and trade secrets, cease manufacturing and marketing heater tubes, and inform all purchasers of their heater tubes that the product is not approved for use in PAC's JFTOT instrument.

17. PAC is willing to post the bond required by the Court and the statute and asks that it be set at \$100.00.

#### BREACH OF CONTRACT AGAINST MORRIS

T 18. PAC incorporates paragraphs 5 through 10 inclusive as if fully set forth verbatim herein.

19. Morris had an employment agreement with PAC's predecessor, Alcor Petroleum Instruments, Inc., which was assigned to PAC when Alcor was acquired. Morris agreed to keep confidential the proprietary information he obtained while employed by Alcor. Morris further agreed not to remove any Alcor property upon his termination. Morris has admitted removing Alcor's proprietary information. Further, as the information necessary to produce the heater tube is not in the public domain, the only way to produce and market the heater tube clone would be by using PAC's trade secrets.

20. Despite demand, Morris and Standard have refused to discontinue manufacturing and marketing the heater tubes. All conditions precedent to recovery by PAC have been met.

21. Because of the breach of the contract by Morris, PAC has been required to engage the law firm of Richie & Gueringer, P.C. to prosecute its claims against Morris and Standard. PAC has agreed to pay Richie & Gueringer, P.C. the reasonable and necessary attorney's fees incurred in prosecuting these claims. Pursuant to the Employment Agreement executed by Mr. Morris and section 38.001 of the Civil Practice and Remedies Code Annotated, PAC seeks recovery of its attorneys' fees incurred in this matter.

THEFT OF TRADE SECRETS/CIVIL THEFT AGAINST MORRIS AND STANDARD

22. PAC incorporates paragraphs 5 through 10 inclusive as if fully set forth verbatim herein.

23. Pursuant to section 134.000 *et seq.* of the Texas Civil Practice and Remedies Code Annotated, PAC seeks recovery against Morris and Standard, jointly and severally for all damages, including the exemplary damages as provided by statute, resulting from the theft of PAC's property and trade secrets.



T 24. Pursuant to section 134.005(b) of the Texas Civil Practice and Remedies Code Annotated, PAC seeks recovery of its reasonable and necessary attorney's fees and costs of court from Morris and Standard, jointly and severally.

BREACH OF FIDUCIARY DUTY

25. PAC incorporates paragraphs 5 through 10 inclusive as if fully set forth verbatim herein.

T 26. Morris has a fiduciary duty to PAC with respect to the trade secrets and other confidential and proprietary information to which he had access during his employment. By executing the Employment Agreement, Morris acknowledged this was a continuing duty and he accepted that obligation. By removing proprietary and trade secret information from PAC and by using PAC's trade secrets to manufacture heater tubes, Morris has breached that fiduciary duty. PAC seeks all damages proximately caused by Morris' conduct and seeks exemplary damages.

WHEREFORE, PREMISES CONSIDERED Petroleum Analyzer Company, L.P. prays that the Court order the clerk to issue a temporary restraining order *ex parte* and at the hearing for the temporary injunction grant PAC injunctive relief and at the trial on the merits, grant PAC recovery against Morris and Standard, jointly and severally, as follows:

- permanent injunction enjoining Morris and/or Standard from using any of PAC's trade secrets or heater tube technology;
- permanent injunction requiring Morris and/or Standard to return all trade secrets and any copies thereof;
- actual, incidental and consequential damages proximately caused by the conduct of Morris and/or Standard;
- exemplary damages as provided by law;
- attorney's fees and costs of court;
- pre- and post-judgment interest at the highest rate allowed by law; and

- such other and further relief, whether at law or in equity to which this Court deems PAC is justly entitled.

Respectfully submitted,

RICHIE & GUERINGER, P.C.

BY: 

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State Bar No. 00785174

Gay Gueringer

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ATTORNEYS FOR PETROLEUM

ANALYZER COMPANY, L.P.

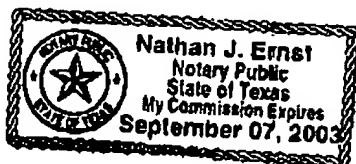
VERIFICATION

T  
STATE OF TEXAS       §  
                              §  
COUNTY OF HARRIS   §

On this day, before me the undersigned authority on this day personally appeared Thomas E. McMullen on behalf of Petroleum Analyzer Company, L.P. and having been duly sworn by me, acknowledged to me that he has read the Plaintiff's Original Petition and Application for Temporary Restraining Order and the facts stated in it are within his personal knowledge and are true and correct.

Thomas E. McMullen  
Thomas E. McMullen

Given under my hand and seal of office this 31 day of January, 2000.



Nathan J. Ernst  
Notary Public, State of Texas

EMPLOYMENT AGREEMENT  
PERTAINING TO CONFIDENTIALITY/PATENTS/COMPETITION

THIS AGREEMENT entered into and effective this 26<sup>th</sup> day of April, 1988, by and between ALCOR, INC. (Company and DAVID MORRIS, (Employee).

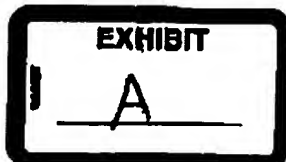
CONFIDENTIALITY/TRADE SECRETS:

Realizing that the Employee will have a fiduciary relationship with the Company and that the Company has trade secrets and other confidential business information including but not limited to customer names and other customer data, business methods and techniques, etc., Employee agrees to protect against unauthorized disclosure and use inside or outside the Company or after leaving the employment of the Company.

After termination of employment with the Company, for any reason, Employee agrees to promptly deliver to the Company all drawings, manuals, letters, files, notes, notebooks, reports, customer lists, mailing lists, and all other materials and records which are property of the Company in the possession of the Employee.

PATENTS, TRADEMARKS, COPYRIGHTS, ETC.

Employee agrees that any works, ideas, conceptions, improvements, or inventions performed or authored by Employee, or contributed to by Employee, during Employee's employment with the Company, continuing up until one year after such termination of employment, shall be the sole property of the Company, and used solely for the benefit of the Company. Employee agrees to assign and hereby does assign all of his interests therein to the Company whenever requested to



do so by the Company in connection with applications, assignments, etc., necessary to obtaining Letters of Patents, Copyrights, or to otherwise protect the Company's interest therein. These obligations shall continue beyond the termination of Employee's employment, regardless of reason for termination, for one year.

#### COMPETITION:

Employee agrees that for a period of one year beyond termination of employment with Company, he will not open or operate a business in direct competition with the Company, engaging directly or indirectly in the same line of research or manufacturing.

#### DEFAULTS:

Injury to the Company will result in a default of this Agreement by the Employee. In such case Company will be entitled to all limits of law to compel compliance with this Agreement. If legal action becomes necessary to enforce compliance hereunder, Company will be entitled to recover any attorney's fees and all court costs involved.

#### BENEFITS:

This Agreement is binding and primarily inures to the benefit of the Company, its successors and assigns and shall be in accordance with and governed by the laws of the State of Texas. It is the entire Agreement and may be amended only by additional written Agreement executed by the President or General Manager of the Company. If any part of said Agreement is, or becomes, unenforceable that particular part will not affect the enforcing of the remainder of the Agreement, or the Agreement as a whole.

AGREEMENT:

Employee and Company have each read the above Agreement and each consent and agree to be bound by its terms.

EXECUTED this 26<sup>th</sup> day of April

1988.

EMPLOYEE:

DAVID MORRIS  
(type name)  
David Morris  
(signature)

COMPANY:

ALCOR, INC.

By: \_\_\_\_\_  
(type name and title)  
[Signature]  
(signature)